

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

CHARLOTTE S HAWKINS,

Debtor(s).

In Proceedings  
Under Chapter 13

Bk. No.: 23-30831

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TRUSTEE'S RESPONSE TO  
DEBTORS' MOTION TO CONTINUE AUTOMATIC STAY

COMES NOW, RUSSELL C. SIMON, Chapter 13 Trustee, and files this his Response to Debtor's Motion for Continuation of Automatic Stay and states as follows:

Although the Trustee takes no position on the instant Motion, the Trustee would point out to the Court the following:

- Debtor's Motion fails to set forth any change of circumstances other than the failure to turnover copies of her tax returns;
- As no Schedules or Plan have been filed, creditors and parties-in-interest have no ability to ascertain if Debtor's financial circumstances have changed since the dismissal of his prior case and whether or not this case was filed in good faith.<sup>1</sup>
- The Trustee would further point out that, pursuant to 11 U.S.C. §362(c)(3)(C), the instant case "is presumptively filed not in good faith (but such presumption may be rebutted by **clear and convincing evidence** to the contrary) as to all creditors if -..." (emphasis added). As such, a hearing on the continuation of the automatic stay requires the Debtor(s) to appear and present evidence so that the Court can make a determination of their good faith, or lack thereof.<sup>2</sup>

WHEREFORE, Trustee prays this Court take whatever actions it deems appropriate on

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<sup>1</sup> This also begs the question as to whether Debtor's counsel has performed their required due diligence to enable them to make the averments concerning the Debtor(s)' good faith required under 11 U.S.C., Section 362(c)(4)(D).

<sup>2</sup> The mere appearance by Debtor(s)' counsel at a hearing to state why the stay should be continued does not

Debtor's Motion, and for all other relief this Court deems just and equitable.

DATED: December 8, 2023

Respectfully submitted,

/s/Russell C. Simon  
RUSSELL C. SIMON, Trustee  
Chapter 13 Trustee  
24 Bronze Pointe  
Swansea, IL 62226  
Telephone: (618) 277-0086  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was mailed to the following interested parties who have not been electronically notified this 8<sup>th</sup> day of December, 2023, with the correct postage prepaid and deposited in the U.S. Mail.

Charlotte S Hawkins  
1804 Martin Luther King Dr  
E St Louis, IL 62206

JD Graham  
1 Eagle Center, Ste. 3A  
OFallon, IL 62269

/s/Jen S